

REMARKS

Claims 76-116 and 118-127 presently appear in this case. No claims have yet been acted upon on the merits. All of the claims have been subject to a restriction requirement. Reconsideration and withdrawal of the restriction requirement and action on the merits and allowance of all of the claims now present in the case are hereby respectfully urged.

The examiner has required restriction under 35 USC 121 and 372, stating that the following two groups of inventions are not so linked as to form a single general inventive concept:

Group I including claims 76-107, drawn to a method of modulating the immune response of a subject with the administration of a sphingoid-polyalkylamine conjugate together with a biologically active molecule and a method for stimulating or enhancing the immune response of a subject to influenza virus by administering CCS with an influenza antigen; and

Group II including claims 108-116 and 118-127, drawn to a composition comprising sphingoid-polyalkylamine conjugate together with a biologically active molecule.

The examiner states that the inventions do not relate to a single general inventive concept as they lack the same or corresponding special technical features. The

examiner considers the shared special technical feature to be a sphingoid-polyalkylamine, which fails to provide a contribution over the prior art as evidenced by Kobori. This restriction requirement is respectfully traversed.

Respectfully, the examiner is incorrect in stating the technical feature shared between the groups is a sphingoid-polyalkylamine. The technical feature shared by both groups is the combination of the sphingoid-polyalkylamine conjugate with a biologically active molecule. This combination gives an unexpectedly enhanced response when used as a vaccine. Thus, the feature that defines over the prior art is not the sphingoid-polyalkylamine conjugate, which is but one component of the combination present in both the vaccine claims and the method of use claims, but the combination of such a conjugate with a biologically active molecule.

Kobori does not teach a combination of sphingoid-polyalkylamine conjugate with a biologically active molecule and therefore the special technical feature that is shared by all of the claims is patentable over the prior art, regardless of whether or not the sphingoid-polyalkylamine conjugate used in the combination is itself novel. Accordingly, all of the claims are so linked as to form a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they

both possess the same or corresponding special technical feature that defines over the prior art.

In addition, claim 76 is a method for using the vaccine of claim 108 and, in accordance with 37 CFR §1.475(b)(2), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to a product and process of use of said product. That is the case here and this restriction requirement is also improper for violating this rule. For all of these reasons, reconsideration and withdrawal of the restriction requirement are respectfully urged.

In order to be responsive, applicant hereby elects the vaccine claims, 108-116 and 118-127.

Claims 108-116 and 118-127 read on the elected invention. While claims 76-107 have been marked as being withdrawn from consideration, for the reasons discussed above the restriction requirement must be withdrawn and all of the claims considered in this case.

It is noted that if the elected product claims are eventually found to be allowable, withdrawn process claims will be considered for rejoinder.

It is submitted that all of the claims now present in the case are directed to a single invention.

In re of: 10/560,928

Reconsideration and withdrawal of the restriction requirement
and action on the merits and allowance of all of the claims
now present in the case are therefore earnestly solicited.

Respectfully submitted,

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